



ADMINISTRATIVE EXPULSION IN RUSSIAN JUDICIAL PRACTICE: DOCTRINAL DEBATES AND LEGAL GUIDELINES FOR UZBEKISTAN

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Article history:	Abstract:
Received: 14 th April 2025 Accepted: 14 th May 2025	This article offers a theoretical and practical analysis of administrative expulsion of foreign nationals, focusing on Russian judicial practice, international obligations, and human rights standards. Drawing on cases in which the author served as legal counsel, it highlights contradictions between the Russian Code of Administrative Offenses and the European Convention on Human Rights. The article examines the tension between public interest and the constitutional principle of proportionality, as well as criticism of Russian courts' refusal to apply ECHR case law after the 2022 denunciation. It concludes with proposals for reforming Uzbekistan's legislation based on doctrinal and comparative legal analysis.

Keywords: expulsion of foreign nationals, public interests, proportionality, administrative proceedings, ECHR, migration law, Russia, Uzbekistan, human rights, doctrine

INTRODUCTION

Administrative expulsion of foreign nationals represents an extreme form of state coercion that directly affects fundamental human rights, especially the right to respect for private and family life. According to international legal doctrine and the jurisprudence of the European Court of Human Rights (ECHR), such a measure is permissible only when it fully complies with the principles of proportionality, necessity in a democratic society, and individualized assessment [1, 4, 7].

In states with developed judicial systems, expulsion is not seen as a purely formal sanction for violating migration rules but as a significant state interference that demands an assessment of personal circumstances, integration level, family ties, and humanitarian consequences. In recent years, however, Russia has shifted away from these standards. This departure became particularly evident after the denunciation of the European Convention on Human Rights, formalized by Federal Law No. 183-FZ of June 11, 2022. Subsequently, the Constitutional and Supreme Courts ruled that Russian judges are no longer required to consider ECHR case law [2, 5].

This normative rupture coincided with a politicization of migration control, intensified administrative repression of foreign nationals, and a narrowing of judicial protection mechanisms. At the same time, the legal nature of expulsion remains ambiguous: it functions both as an administrative penalty and a quasi-judicial tool for regulating population composition [6]. These complexities make the legal evaluation of expulsion

especially relevant amid a crisis of trust in the judiciary and transformations in Russia's international legal commitments.

This study aims to provide a doctrinal and applied analysis of Russia's recent judicial practice concerning expulsion, based on four court cases in which the author acted as legal representative. It also proposes legal reforms for Uzbekistan, where migration law is actively developing and faces similar challenges in balancing enforcement with the protection of migrants' rights.

METHODOLOGY

This study employs a comprehensive set of legal and interdisciplinary methods that allow for an in-depth analysis of the phenomenon of administrative expulsion within contemporary Russian law enforcement practice, and its comparison with international standards.

At the core of the analysis lies the legal-dogmatic method, applied for the systematic examination of the norms set out in Chapter 18 of the Code of Administrative Offenses of the Russian Federation, relevant provisions of Federal Law No. 114-FZ "On the Procedure for Exit from and Entry into the Russian Federation," as well as rulings of the Constitutional and Supreme Courts of the Russian Federation and presidential decrees issued during the COVID-19 pandemic.

The key empirical basis consists of four court cases heard in regional and cassation courts in Russia between 2020 and 2024, analyzed in the context of the following scenarios:



- expulsion applied without regard for pandemic-related suspensions of migration deadlines;
- repeated violation of migration registration requirements despite established social ties in Russia;
- administrative offense involving narcotic intoxication where expulsion conflicted with presidential decrees;
- incorrect legal classification leading to automatic imposition of expulsion.

In all cases, the focus was on adherence to the principle of individualized punishment, the legality of expulsion in light of Article 8 of the European Convention on Human Rights, and the availability of humanitarian alternatives within domestic law.

Particular emphasis was placed on the hermeneutic analysis of now-defunct ECHR jurisprudence in Russia (*Alim v. Russia*, *Üner v. the Netherlands*, *Boultif v. Switzerland*) and on theoretical models developed at the intersection of migration and human rights scholarship (Kubal, Soldatov, Polyakova, and others) [1; 3; 5].

Thus, the study combines doctrinal and empirical legal approaches aimed at identifying normative gaps, judicial formalism, and avenues for reforming the legal framework of administrative expulsion in a post-conventional legal context.

RESULTS

The analysis of four cases adjudicated in Russian courts between 2020 and 2024 reveals persistent trends and problematic areas in the application of the institution of administrative expulsion. Each of these cases bears significant legal importance, as they concern not only formal violations of migration regulations but also broader issues such as the operation of temporary normative acts, adherence to the principle of proportionality, the individualization of sanctions, and the humanitarian consequences of administrative decisions.

In one case, the grounds for holding the individual liable stemmed from overstaying the legal period of stay in the Russian Federation after the expiration of migration registration. The foreign national had arrived in Russia before the introduction of COVID-19-related restrictions and had, for a significant period, been legally protected under presidential decrees that suspended deadlines for foreign nationals' stay (in particular, Decrees No. 274 of April 18, 2020, and No. 364 of June 15, 2021). However, during the preparation of the administrative offense protocol, the internal affairs authorities disregarded these acts and classified the stay as unlawful.

In the complaint submitted, the legal representative emphasized the presence of a family in Russia, including

a spouse and two children who were Russian citizens, thereby making the expulsion clearly disproportionate and in violation of the right to respect for private and family life under Article 8 of the European Convention on Human Rights. Nevertheless, neither the court of first instance nor the appellate court considered these arguments; both formally confirmed the presence of an administrative offense and upheld the application of the sanction.

Only the cassation court, upon reviewing the case in its entirety, found that at the time of initiating administrative proceedings, the individual's stay in the Russian Federation had not legally expired, as it remained suspended under the aforementioned decrees, which were in effect until the lifting of transportation restrictions with the Republic of Uzbekistan. The cassation court annulled both the lower court's ruling and the appellate decision but failed to provide any legal assessment of the humanitarian arguments related to family, children, integration, and prolonged residence in the country.

This case clearly illustrates the prevailing practice of formalistic adjudication: even when there are clear grounds for individualizing and humanizing the sanction, courts including the cassation instance prefer to limit themselves to procedural errors or technical grounds, avoiding substantive evaluation of human rights implications. Such a trend evidences an erosion of substantive legal analysis in migration cases and a retreat from the application of the proportionality principle as understood under both national and international law.

In another, more complex case involving humanitarian considerations, the subject was a foreign national holding a residence permit, who had completed higher education in Russia and was in a civil union with a Russian citizen. The proceedings were initiated due to a repeated violation of migration registration rules, classified under Part 4 of Article 18.8 of the Russian Code of Administrative Offenses. However, the appellate court in this case made a rare reference to the applicant's legal status, prolonged integration into society, and family circumstances, invoking the legal reasoning in *Boultif v. Switzerland* and *Üner v. the Netherlands*, despite the formal termination of their binding authority. [3] The court held that imposing expulsion would violate the principle of proportionality and fall short of the requisite standard of protection for private and family life. This case exemplifies a rare instance of individualized justice, wherein the court refrained from mechanically applying sanctions and instead prioritized the balance between public and private interests.



Of particular significance is the third case, in which administrative expulsion was imposed for an offense unrelated to migration per se—specifically, the consumption of narcotic substances without a prescription (Part 2 of Article 6.9 of the Code of Administrative Offenses). The first-instance court imposed a fine of 4,000 rubles along with administrative expulsion, accompanied by detention in a temporary holding facility for foreign nationals. The offense was considered socially significant and potentially threatening to public order, likely influencing the severity of the sanction.

However, during the appellate review of the defense's complaint, the court took note of the fact that at the time of the ruling, Presidential Decree No. 274 of April 18, 2020 (as amended on June 15, 2020), remained in force, prohibiting the enforcement of expulsion measures against foreign nationals until September 15, 2020. Referring to Part 2 of Article 1.7 of the Code of Administrative Offenses (retroactive effect of a more lenient law), the appellate court annulled the expulsion order, recognizing its application under the decree as unlawful.

Notably, the court did not examine the degree of culpability, the personal characteristics of the offender, or the proportionality of the sanction in light of its potential impact on the individual's rights. Furthermore, the legality of detention in the holding facility was not separately assessed. The cancellation of expulsion occurred solely on formal grounds, without addressing the substantive merits of the case or challenging the presumption of the original sanction's fairness. This reflects the dominance of procedural minimalism in Russian legal practice, wherein the protection of rights is only ensured when formal procedures are violated or imperative norms are ignored.

The fourth case involved an erroneous classification of the offense: instead of a violation of migration registration (Part 1 of Article 18.8), the charge was unlawful stay in the Russian Federation without documents (Part 1.1 of the same article), resulting in the automatic imposition of expulsion. The supreme court of the region reclassified the offense but did not dismiss the expulsion measure, failing to consider defense arguments related to family circumstances, length of residence, lack of prior convictions, and other relevant factors. Thus, even in instances of partial legal correction, there remains a strong inclination toward strict sanctioning without evaluating the humanitarian context.

The comparative analysis of the reviewed cases reveals several entrenched and systemic deficiencies in the current practice of administrative expulsion in Russia.

First, in most cases, courts of first instance abandon the principle of individualized administrative penalties, imposing expulsion as a default measure despite the Code of Administrative Offenses (including Parts 1 and 1.1 of Article 18.8) framing it as optional rather than mandatory. This reflects a formalization of the sanctioning mechanism in which the individual's personality, life circumstances, and level of societal integration are largely disregarded.

Second, the case analysis reveals a persistent trend of neglecting temporary normative acts, particularly Presidential Decrees No. 274 and No. 364, which were enacted during the pandemic. Despite their direct legal effect and explicit suspension of deadlines, these acts were ignored by trial and even appellate courts indicative of a failure in legal interpretation mechanisms and a weak understanding of the superior legal force of such acts.

Third, there is a noticeable erosion of humanitarian analysis. In none of the reviewed cases did the courts substantively assess arguments relating to family ties, children, long-term residence, or social integration, despite the fact that such considerations are derived directly from the principle of proportionality, as enshrined in both constitutional and international legal frameworks. Even cassation courts, when annulling expulsion orders, did so on procedural or formal grounds, systematically avoiding principled assessments of individual rights in the context of state interference in private and family life.

Despite the termination of the ECHR's applicability in Russia (Federal Law No. 183-FZ of June 11, 2022), some courts continue to invoke the case law of the European Court of Human Rights, reflecting a value-based divergence between rights-oriented adjudication and a sovereigntist doctrine grounded in national legislative autonomy. This legal dualism underscores the instability and fragmentation of migration control policy.

Finally, the most significant outcome of this analysis is the finding that the institution of administrative expulsion increasingly operates not as a legal sanction subject to individualized judicial review, but as a mechanism of migration governance embedded within an administrative-command model of control. This transformation is especially alarming given the rollback of international rights protection mechanisms and necessitates reevaluation both in legal doctrine and legislative reform. For Uzbekistan, which is developing its own migration governance framework, Russia's experience serves as a cautionary example: expulsion must remain an exceptional, lawfully justified, and individualized measure—not an administrative routine. In this regard, it is reasonable to incorporate humanitarian



exceptions, mandatory assessment of expulsion consequences, and expanded judicial oversight based on international human rights standards into Uzbek legislation.

DISCUSSION

The analyzed case studies demonstrate a systemic erosion of humanitarian principles in Russia's application of administrative expulsion. This reflects a broader academic consensus on the trend toward stricter migration control through punitive tools—expulsion, deportation, and entry bans—often at the expense of individual legal guarantees.

N.N. Zinchenko notes that the Russian enforcement model is becoming increasingly repressive, using expulsion not as a last resort but as a statistical tool to reduce migration pressure. Similarly, V.V. Chetvernin [1] criticizes the lack of judicial discretion, stating: "instead of proportionality, automatism prevails; instead of individualization an imitation of humanitarianism" [2].

In foreign doctrine, the principle of proportionality in migration sanctions is well developed, particularly under Article 8 of the European Convention on Human Rights. The ECHR has consistently required that expulsion decisions account for residence duration, family ties, societal integration, and children's best interests (e.g., *Boultif v. Switzerland* [3], § 48; *Üner v. the Netherlands* [4], § 57). Although ECHR rulings no longer apply in Russia, they retain relevance as doctrinal benchmarks in comparative legal analysis.

However, Russia's new legal doctrine prioritizes national law. The Constitutional Court's Ruling No. 55-P of 7 December 2023 confirms that national sovereignty can override prior international commitments, including ECHR case law. This signals a shift from substantive guarantees to strict legal positivism, where individual rights exist only if codified domestically.

In Uzbekistan, where legal harmonization with international norms is underway, these doctrinal developments serve as warnings. Scholars note the absence of a clear judicial mechanism for reviewing the proportionality of expulsion decisions. Yu.S. Rakhimov proposes introducing institutional safeguards requiring courts to assess humanitarian factors before expelling individuals [5].

Therefore, Russia's experience offers a cautionary lesson for Uzbekistan: intensifying punitive migration policy without humanitarian protections risks weakening public confidence in the justice system and increasing migrant vulnerability. A sustainable legal approach must balance public order with protection of fundamental rights—especially family life, private life, and safeguards against arbitrary state action.

CONCLUSION

The study reveals that the practice of administrative expulsion in Russia has shifted away from humanitarian and proportionality-based standards. The withdrawal from the ECHR marked a critical turning point, reinforcing a more formalistic and repressive legal approach. Notably, courts have deprioritized individualized assessments and often disregard humanitarian factors such as family and social ties.

Four analyzed cases, in which the author served as legal counsel, illustrate persistent issues: neglect of temporary legal exemptions, limited reference to international human rights standards, and an automatic application of expulsion measures. Even when rulings were overturned, it was due to procedural flaws—not humanitarian reasoning.

Russia's experience offers an important warning for Uzbekistan. As Uzbekistan modernizes its migration legislation, it must avoid replicating a rigid expulsion regime. Introducing proportionality review, expanding judicial discretion, and mandating the assessment of humanitarian factors are key to ensuring migrant rights. In post-Soviet contexts, where legal institutions are still evolving, both the successes and failures of neighboring jurisdictions should inform the creation of a balanced, rights-oriented migration policy.

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